

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

RORY HOLLAND,
Plaintiff

v.

CITY OF PORTLAND, ET AL.,
Defendants

Civil No. 95-83-P-C

GENE CARTER, Chief Judge

MEMORANDUM OF DECISION AND ORDER GRANTING
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I. SUMMARY JUDGMENT STANDARD

The Court of Appeals for the First Circuit has recently explained once again the workings and purposes of the summary judgment procedure:

Summary judgment has a special niche in civil litigation. Its "role is to pierce the boilerplate of the pleadings and assay the parties' proof in order to determine whether trial is actually required." Wynne v. Tufts Univ. Sch. of Med., 976 F.2d 791, 794 (1st Cir. 1992), cert. denied 113 S. Ct. 1845 (1993). The device allows courts and litigants to avoid full-blown trials in unwinnable cases, thus conserving the parties' time and money, and permitting courts to husband scarce judicial resources.

A court may grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). . . .

Once a properly documented motion has

engaged the gears of Rule 56, the party to whom the motion is directed can shut down the machinery only by showing that a trialworthy issue exists. See National Amusements [v. Town of Dedham], 43 F.3d [731,] 735 [(1st Cir. 1995)]. As to issues on which the summary judgment target bears the ultimate burden of proof, [he] cannot rely on an absence of competent evidence, but must affirmatively point to specific facts that demonstrate the existence of an authentic dispute. See Garside [v. Osco Drug. Inc.], 895 F.2d [46,] 48 [(1st. Cir. 1990)]. Not every factual dispute is sufficient to thwart summary judgment; the contested fact must be "material" and the dispute over it must be "genuine." In this regard, "material" means that a contested fact has the potential to change the outcome of the suit under the governing law if the dispute over it is resolved favorably to the nonmovant. See [United States v.] One Parcel [of Real Property with Buildings], 960 F.2d [200,] 204 [(1st Cir. 1992)]. By like token, "genuine" means that "the evidence about the fact is such that a reasonable jury could resolve the point in favor of the nonmoving party" Id.

When all is said and done, the trial court must "view the entire record in the light most hospitable to the party opposing summary judgment, indulging all reasonable inferences in that party's favor," Griggs-Ryan [v. Smith], 904 F.2d [112,] 115 [(1st Cir. 1990)], but paying no heed to "conclusory allegations, improbable inferences, [or] unsupported speculation," Medina-Munoz [v. R.J. Reynolds Tobacco Co.], 896 F.2d [5,] 8 [(1st Cir. 1990)]. If no genuine issue of material fact emerges, then the motion for summary judgment may be granted.

. . . [T]he summary judgment standard requires the trial court to make an essentially legal determination rather than to engage in differential factfinding

McCarthy v. Northwest Airlines, Inc., 56 F.3d 313, 314-15 (1st

Cir. 1995).

II. FACTS

The undisputed facts which are genuine and material, stated in the light most favorable to the Plaintiff, are as follows.¹ Sometime after 1:15 p.m. on the afternoon of October 18, 1994, Portland Police Officer Daniel Knight heard on his police radio a report of a bank robbery at the Key Bank in Canal Plaza.² Defendants Rizzo, Coffin, and the City of Portland's Memorandum in Support of Their Motion for Summary Judgment (Docket No. 19) Ex. 1, Affidavit of Daniel Knight at ¶ 2. Knight was on bicycle patrol in downtown Portland. Knight Aff. at ¶ 2. The robbery suspect was described as a black male, about 6'2" tall, 185 pounds, unshaven, wearing a brown jacket, possibly suede, and a hat, and carrying a black leather briefcase. Plaintiff's Supplemental Statement of Material Facts (Docket No. 40) Ex. A Radio Transcript ("Radio Tr.") at 4, 5, 7, 15, and 18; Knight Aff. at ¶ 2. Shortly before 2:00 p.m., Knight noticed a gray or silver Subaru being driven by a person who appeared to match the description of the bank robber. Knight Aff. at ¶ 3. Plaintiff

¹Although there are numerous genuinely disputed facts in this case, the Court considers them immaterial to the dispute at issue on summary judgment.

²Knight is not named as a Defendant. The Complaint, however, includes "certain unknown members of the Portland Police Department" in the caption. At this stage in the case, discovery is over and the case is scheduled for trial on the February list, and with no attempt by Plaintiff to amend his Complaint to list the names of the previously unknown officers, the Court finds that the only Defendants properly in the case are Officers Rizzo and Coffin and the City of Portland.

is a black man approximately 6'2" tall and weighing almost 200 pounds. Knight Aff. at ¶ 3. Plaintiff was wearing a brown jacket and hat. Knight Aff. at ¶ 3. At the same time, Knight also noticed that the suspect's car had no rear window. Knight Aff. at ¶ 3.

Plaintiff parked his Subaru in the first parking space he could find in the vicinity of the Cumberland County Courthouse. Holland Depo. at 36-37. After parking, Holland put some money in the meter, straightened out his tie, and started crossing Federal Street. Holland Depo. at 37. While crossing the street, Holland was approached by Knight in the middle of Federal Street.³ Holland Depo. at 38. Officer Knight addressed Plaintiff by name⁴ and told him that he wanted to speak to him about a robbery. Knight Aff. at ¶ 4; Holland Depo. at 50. Knight then radioed for backup in Holland's presence,⁵ stating that he had stopped

³This fact is disputed by Knight, who claims that after the car pulled over to the side of Federal Street, he biked over to the driver's side of the vehicle. Knight Aff. at ¶ 4. Although the location of Mr. Holland when Knight approached him is in dispute, it is not material to the issues raised on summary judgment.

⁴Knight believed that the driver was Rory Holland, but since he had never personally had any dealings with Holland, Knight was not altogether sure. Knight Aff. at ¶ 5.

⁵It is unclear from Knight's Affidavit whether he disagrees with Holland on this point. The Court, however, infers from the ordering of the facts in Knight's Affidavit that he radioed for assistance before or at the same time as Holland was parking his car. Knight Aff. at ¶ 3. The transcript of the radio traffic that day does not indicate whether Knight had already made contact with Holland at this point. Nevertheless, the Court does not find that the timing of the radio call, or whether it was overheard by Plaintiff, is material.

someone matching the description of the bank robber and including a description of Holland's car. Radio Tr. at 18; Holland Depo. at 49; Knight Aff. at ¶ 3; Rizzo Depo. at 14; Coffin Depo. at 13.

Officers Sullivan Rizzo, Bruce Coffin, and Taylor responded to the scene.⁶ Knight Aff. at ¶ 4-5; Holland Depo. 49-51; Rizzo Depo. at 13-14. Upon his arrival, Rizzo confirmed that the driver fit the description of the robbery suspect. Rizzo Depo. at 20. Rizzo also noted that the suspect's car had a missing rear window. Rizzo Depo. at 20. Knight indicated to Rizzo that Plaintiff was the person he had called dispatch about, and Knight stood back to permit Rizzo to talk with the suspect. Knight Aff. at ¶ 4. Plaintiff put his hands in the air. Holland Depo. at 69, 71-73, 82. The police officers questioned Holland about the bank robbery. Holland Depo. at 71. Holland did not answer any of their questions. Holland Depo. at 71.

Then Rizzo asked another officer, probably Knight, if Plaintiff had been driving and the other officer responded that he had. Holland Depo. at 71-72. Holland alleges in his deposition that Rizzo said "well, then we can get him for not having a license or something or other." Holland Depo. at 72. Holland next contends that Rizzo told him "I can arrest you if you do not show me a valid driver's license and tell me where you live." Holland Depo. at 72. Rizzo again asked for Holland's

⁶Rizzo claims that when he arrived at the scene, he saw the driver exit the car. Rizzo Depo. at 13-15. This is disputed by Holland's claim that he was already out of his vehicle when he was approached by Knight.

driver's license, telling him, "If you don't go and get me a driver's license, I'm going to arrest you for failure to identify yourself to me." Holland Depo. at 73; Rizzo Depo. at 27.

Holland did not respond, and Rizzo placed him under arrest for failure to give his name and address. Holland Depo. at 73; Rizzo Depo. at 19; Coffin Depo. at 17. After Rizzo informed Plaintiff that he was arresting him, and Plaintiff had turned and placed his hands on the roof of the vehicle, Rizzo and Coffin proceeded to "pat him down." Rizzo Depo. at 15-16; Coffin Depo. at 12, 16; Holland Depo. at 76-77. Rizzo then reached into Plaintiff's pocket and found Plaintiff's driver's license which identified the driver as Rory Holland. Holland Depo. at 76; Rizzo Depo. at 21, 22, 27.

After Plaintiff was arrested, he was transported to the Cumberland County Jail by Coffin. Coffin Depo. at 17. Holland continued to refuse to confirm his identity. Rizzo Depo. at 23. After Plaintiff had been released on bail, he retrieved his car which had been towed. Holland Depo. at 79.

III. DISCUSSION

A. INDIVIDUAL POLICE OFFICERS

1. Federal Civil Rights Claims

A police officer is entitled to qualified immunity against § 1983 liability if "a reasonable officer could have believed" that the officer's conduct was lawful "in light of clearly established law and the information the [officer] possessed." Anderson v. Creighton, 483 U.S. 635, 641 (1987). The only

germane inquiry for purposes of qualified immunity in this case is whether the officer's conduct was objectively reasonable. Santiago v. Fenton, 891 F.2d 373, 384 (1st Cir. 1989).

In order for a law enforcement officer to initiate an investigatory stop of a person without violating such persons rights under the Fourth Amendment, the officer must have an articulable and reasonable suspicion of the person's involvement in criminal activity. Terry v. Ohio, 392 U.S. 1 (1968). Thus, an officer's reasonable suspicion, grounded in specific and articulable facts, that a person he encountered was involved or wanted in connection with a completed felony justified an investigative stop to investigate the suspicion. United States v. Hensley, 469 U.S. 221 (1985). The undisputed facts in this case establish that Knight had a reasonable, articulable suspicion to stop and question Plaintiff regarding the Key Bank robbery. The police radio dispatcher reported the bank robbery at Key Bank at about 1:20 p.m. The suspect was described as a black man, approximately 6'2" tall, approximately 185 pounds, wearing a brown jacket and a black hat, and carrying a black briefcase. Knight saw a vehicle that was being driven by a man fitting the description of the suspect. Radio Tr. at 18. Plaintiff is approximately 6'2" tall and weighs almost 200 pounds. When seen by Knight, Plaintiff was wearing a brown or black jacket and a hat. Knight Aff. at ¶ 3; Holland Depo. at 44-45. In addition, Knight observed that there was a black bag on the seat of Plaintiff's car. Knight Aff. at ¶ 4. The facts, as

stated above, gave rise to reasonable suspicion on the part of Knight sufficient to stop Plaintiff.

Furthermore, Defendant Rizzo had probable cause to arrest Plaintiff after Plaintiff failed to identify himself verbally or provide proof of identification when requested. "[P]robable cause exists if the facts and circumstances known to the officer are sufficient to warrant a reasonable police officer in believing that the suspect has [committed] or is committing a crime." Tatro v. Kervin, 41 F.3d 9, 14 (1st Cir. 1994). The test is not a stringent one and is satisfied if the presence of probable cause is at least arguable. Rivera v. Murphy, 979 F.2d 259, 262 (1st Cir. 1992).

Even if Rizzo did not see Plaintiff get out of his car, Rizzo could reasonably rely on Knight's radio call giving a description of the car the suspect was driving and on Knight's confirmation at the scene that he had seen Plaintiff driving that car. The additional information possessed by Rizzo was from his own observation that the vehicle Plaintiff was driving was missing a rear window. The statutory provision, in effect in October 1994, regarding the examination of motor vehicles by police officers provided, in pertinent part:

Any law enforcement officer in uniform whose duty it is to enforce the motor vehicle laws may stop and examine any motor vehicle for the purpose of ascertaining whether its equipment complies with the requirements of section 2503, and the officer may demand and inspect the operator's license, certificate of registration and permits. . . .

. . . .

Whoever, while operating a vehicle in violation of this Title, fails or refuses, when requested by an officer authorized to make arrests, to give the operator's correct name, address and date of birth is guilty of a Class E crime.

Title 29 M.R.S.A. § 2501 (Supp. 1994). Rizzo, aware that Plaintiff had been driving a car in which the rear window was missing, was arguably authorized by section 2501 to request Plaintiff's driver's license.⁷ Under the circumstances, it was reasonable for Rizzo to conclude that Plaintiff's car was being operated in violation of Title 29, the Motor Vehicle statute.⁸ With this in mind, it was proper for Rizzo to request identification from the driver of such a vehicle. 29 M.R.S.A.

⁷Although Plaintiff was already stopped for an unrelated reason, section 2501 authorized Rizzo's request for Plaintiff's driver's license.

⁸A reasonable officer could have concluded that Plaintiff's vehicle was being operated in violation of Title 29. Section 2503 provides:

1. Inspection standards. All motor vehicle equipment subject to inspection shall meet the standards set forth in this section and the rules and regulations promulgated by the Chief of the State Police pertaining to motor vehicle equipment subject to inspection and shall:

- A. Be in good working order;
- B. Be safely attached or secured to the chassis or body of the vehicle;
- C. Be mechanically safe; and
- D. Not pose a hazard to the occupant of the vehicle or to the general public.

29 M.R.S.A. § 2503 (Supp. 1994).

§ 2501. Once Plaintiff refused to identify himself, the statute authorizes an officer to arrest Plaintiff for failure to give his name and address. 29 M.R.S.A. § 2501; 17-A M.R.S.A.

§ 15(B)(authorizes arrest for a Class E crime committed in the officer's presence). As a general matter, a reasonable officer could have thought that Plaintiff's vehicle was in violation of the inspection standards statute because the absence of a rear window may "pose a hazard to the occupant of the vehicle." 29 M.R.S.A. § 2503.⁹

The undisputed facts render hollow Plaintiff's allegations that because Defendants knew who Plaintiff was -- calling him by name -- his arrest for not identifying himself was a pretext for harassment and part of a continuous pattern of harassment by the Portland Police Department and its officers.¹⁰ Even if, as the

⁹Alternatively, Maine's criminal code permits police officers who believe a civil violation has been committed to issue a citation to the offending person requiring their return to court on a designated day. 17-A M.R.S.A. § 17(1). In order for the citation to be accurately completed, section 17(2) makes it a Class E crime for any person to intentionally refuse to provide his name and address.

¹⁰Plaintiff alleges that some of the police officers present knew his name through previous contacts with the Portland Police Department. Holland Depo. at 72-73. Therefore, the entire request for identification was unnecessary and simply part of an overall pattern of harassment by the Portland Police Department. As already mentioned, Knight thought he knew who Plaintiff was and addressed him by name. Rizzo also believed that he knew who Holland was through briefs at roll call, though he had no specific recollection of any incident involving him. Rizzo Depo. at 5-6. Coffin also believed that the person stopped by Knight was Rory Holland. Coffin Depo. at 15, 19. Coffin recalled Holland's name and certain descriptions of his history and behavior from information circulated by the Portland Police Department. Coffin Depo. at 7-8, 20-21. Coffin does not recall

record here illustrates, the officers thought they knew the Plaintiff's identity, prudent police procedure would warrant an officer's asking for identification to confirm their understanding. Moreover, this basic information is necessary to complete a Uniform Traffic Ticket.

Clearly, under these circumstances, "a reasonable officer could have believed" that Defendant's stop and arrest of Plaintiff were lawful "in light of clearly established law and information" that Defendants possessed. Anderson, 483 U.S. at 641. Hence, Defendants Rizzo and Coffin are protected by qualified immunity from Plaintiff's civil damages suit. Because the facts do not indicate that any constitutional violations occurred with respect to the stop and arrest of Plaintiff, this Court will grant summary judgment to both of the individual Defendants on these claims of Fourth and Fourteenth Amendment violations pursuant to section 1983. 42 U.S.C. § 1983.

2. State Law Claims

Plaintiff claims that the officer Defendants falsely arrested and imprisoned him. Under the Maine Tort Claims Act, 14 M.R.S.A. § 8111(1)(C), a police officer is absolutely immune from

ever having actual contact with Holland although he had heard of him. Coffin Depo. at 6, 8. Holland believes that he was arrested by Coffin in April 1994 for failure to have a driver's license, but the arrest and incident reports do not support this belief. Defendants Rizzo, Coffin and the City of Portland's Memorandum in Support of Their Motion for Summary Judgment (Docket No. 19) Ex. 5.

liability when performing any "discretionary function."¹¹ An officer is entitled to this absolute immunity, regardless of whether he has assessed correctly the legality of his conduct, so long as the officer's conduct does not "clearly exceed[], as a matter of law, the scope of any discretion he could have possessed in his official capacity as a police officer." Polly v. Atwell, 581 A.2d 410, 414 (Me. 1990).

Plaintiff here has failed to establish that the officers' conduct fell outside that discretionary realm. A police officer performs a "discretionary function" within the meaning of section 8111(1)(C) when making a warrantless arrest. Leach v. Betters, 599 A.2d 424, 426 (Me. 1991). Resolving all disputes of material fact in favor of Plaintiff and drawing all reasonable inferences in favor of Plaintiff, the facts establish that Rizzo and Coffin

¹¹Section 8111(1) provides in pertinent part:

1. Immunity. Notwithstanding any liability that may have existed at common law, employees of governmental entities shall be absolutely immune from personal civil liability for the following:

.

C. Performing or failing to perform any discretionary function or duty, whether or not the discretion is abused; and whether or not any statute, charter, ordinance, order, resolution, rule or resolve under which the discretionary function or duty is performed is valid; [or]

.

E. Any intentional act or omission within the course and scope of employment; provided that such immunity shall not exist in any case in which an employee's actions are found to have been in bad faith.

had probable cause to arrest Plaintiff because, given his knowledge about the rear window of the car Plaintiff was driving, he had statutory authorization to ask Plaintiff for his driver's license. It was Plaintiff's refusal to provide the requested information that ultimately lead to his arrest. Thus, Rizzo and Coffin acted within their discretion in arresting Plaintiff and is entitled to immunity under the Maine Tort Claims Act.

B. CITY OF PORTLAND

There can be no respondeat superior or vicarious liability under section 1983. City of Canton v. Harris, 489 U.S. 378, 385 (1989). Thus, the City of Portland cannot be held responsible for Rizzo or Coffin's actions relating to Plaintiff's arrest.¹² A city is "only liable when it can be fairly said that the city itself is the wrongdoer." Collins v. City of Harker Heights, 503 U.S. 115, 122 (1992). To recover against the City, Plaintiff must show that the City maintained an unlawful custom or policy that caused the deprivation of Plaintiff's rights. Harris, 489 U.S. at 385. Plaintiff must prove both that "(1) there existed a municipal custom or policy of deliberate indifference to the commission of constitutional violations by police officers; and (2) this custom or policy was the cause of, and moving force behind, the particular constitutional deprivation of which he was complaining." Foley v. City of Lowell, 948 F.2d 10, 14 (1st Cir. 1991); Bordanaro v. McLoed, 871 F.2d 1151, 1156 (1st Cir.

¹²The Court notes that Plaintiff has identified no person or official as responsible for the harm allegedly suffered by him.

1989)(collecting relevant Supreme Court cases), cert. denied, 493 U.S. 820 (1989). See also Monell v. New York City Dept. of Social Servs., 436 U.S. 658, 694 (1978).

Plaintiff contends that the Portland Police Department's circulation of inaccurate information regarding him and the failure to exercise due care in vetting that information was responsible for his arrest. Plaintiff also bases his claim against the City of Portland on the Police Department's failure to train its officers to use the information regarding criminal histories correctly. Specifically, Plaintiff alleges that his arrest is merely the latest incident in a pattern of harassment, and that that pattern is founded upon inaccurate information about Plaintiff's criminal background circulated among Portland Police Department employees. Plaintiff does not allege that the Portland Police Department's policy of gathering information regarding an individual's criminal history, which Plaintiff calls "profiling" or "targeting," is unconstitutional in and of itself.

Plaintiff has not produced any evidence that the Portland Police Department made a deliberate choice to seek him out on October 18, 1994. Moreover, because Plaintiff has failed to show a constitutional violation in this case -- the officers had reasonable suspicion to stop Plaintiff and probable cause to arrest Plaintiff -- the second prong of the test for municipal liability under section 1983 is not satisfied. The Court will grant Defendant City of Portland's Motion for Summary Judgment.

Accordingly, it is ORDERED that Defendants Rizzo, Coffin, and the City of Portland's Motion for Summary Judgment be, and it is hereby, GRANTED.

GENE CARTER
Chief Judge

Dated at Portland, Maine this 25th day of January, 1996.